IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CWP No.8051 of 2005

Date of Decision: 22.9.2006

Ashok Kumar Sharma and another .....Petitioners

Versus

State of Punjab and another .....Respondents

CORAM:- HON'BLE MR.JUSTICE J. S. KHEHAR
HON'BLE MR.JUSTICE S. D. ANAND

Present: Mr.PS Dhaliwal, Advocate
for the petitioners.

Mr.Ashok Aggarwal, Additional AG Punjab for the respondents.

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S.D.ANAND, J.

1. The following pleading-related facts are apparent:

2. Ashok Kumar Sharma (hereinafter referred to as the petitioner) was appointed to the post of District Social Welfare Officer on 16.1.1980 (Annexure P1). It was a Class-III non-gazetted post in the Department of Social Welfare, Punjab. On the commencement of Integrated Child Development Scheme (a 100% centrally sponsored scheme), options were invited from the officials of the Social Welfare Department to indicate if they would like to continue with the parent Department or become members of the cadre manning the ICDS.

3. (The petition was not pressed on behalf of the other petitioner Harjit Arneja).

4. After raising lot many queries about the promotional aspects

and placement etc., the petitioner opted (Annexure R-2/T) for joining the 'ICDS side' with the rider that "if any change have been made in the circular of seniority list issued vide Govt. of Punjab letter No.1/184/SW/80/5116-41 dated 16.5.91 then I will have right to give my option again".

5. An option format was also enclosed with that document which (format furnished by the petitioner) is extracted hereunder:

> "I have gone through thoroughly the rules of Social Security and ICDS of Class-I. After going through these rules I give my option as under:
>
> I N.A. Name and Designation want to be remain in Social Welfare Side as my appointment in line of promotion.
>
> I, Ashok Kumar, Child Development Project Officer, Faridkot want to be remain in I.C.D.S. Side.
>
> This option is subject to the seniority list circulated vide letter No.1/184/SW/5116-41 dated 16.5.91."

6. The 'conditional' option given by the petitioner to join the ICDS cadre was accepted by the competent authority vide letter dated 25.11.1992 (Annexure P-9).

7. The averment of the petitioner is that he never unconditionally opted for absorption on the ICDS side and that his option for that side was actuated by the non-framing of the seniority list on the Social Welfare side. The essential grievance, in the context, is that the promotion of his juniors in the parent Department without considering him is illegal as no consent therefor had been sought from him. The further grievance of the petitioner is that his name has been unauthorisedly deleted from seniority list of the Social Welfare Department. The categorical averment, in the context, is that the option given by him, apart from being conditional in character, also represented an adhoc arrangement.

8. The petitioner applied for the issuance of a mandamus directing respondents to include his name in the seniority list, Exhibit P12, to consider his name for promotion “on the Social Security Side” and to declare that he had been “sent and posted on the ICDS side on deputation as adhoc arrangement”.

9. The respondents plead that the petitioner had, on his free volition, opted to join the cadre of personnel manning the ICDS Scheme and the only rider indicated by him was that he would be entitled to offer another option “if any change have been made in the circular of seniority list issued vide Govt. of Punjab letter No.1/184/SW/80/5116-41 dated 16.5.91” (Annexure R-2/T).

10. We have heard Mr.PS Dhaliwal, learned counsel for the petitioner and Mr.Ashok Aggarwal, learned Additional AG Punjab for the respondents.

11. The claim raised by the petitioner is plainly bereft of merit. That the option given by him to go over ICDS side was subject to only one rider is evident from Annexure R2/3. Even at the cost of repetition, it may be noticed that the rider aforesaid enabled the petitioner to give his option again if any change was made in the seniority list under reference. As would be further evident from the perusal of format enclosed with Annexure R-2/T, the petitioner gave that option after having become fully cognizant of the rules governing the service conditions of the Officers of Social Security and ICDS of Class-I.

12. Our attention has not been invited on behalf of the petitioner to any circumstance which may indicate that any change had been made in the seniority list which would have enabled the petitioner to exercise his option

again. His grievance with regard to the deletion of his name from the seniority list maintained by the Social Welfare side is thoroughly mis-conceived. After his having opted to be a member of the ICDS cadre, he could not have insisted upon the retention of his name in the seniority list maintained by the Social Welfare side. It would be pertinent to notice here that the option to go over to the ICDS side was given by the petitioner after having made a number of queries to the competent authority in the matter of his promotional aspects etc. Obviously, the queries were in the context of comparative placement of status in the Social Welfare Department and ICDS inter se. It appears that the petitioner found, at a subsequent point of time, that he had not exercised his discretion properly by opting for the ICDS cadre. His endeavour to revoke the option by pleading that his placement with the ICDS cadre was an adhoc arrangement, is mis-conceived and is not borne out by the record. There is further nothing on the file to indicate that the joining of the ICDS cadre by the petitioner was adhoc in character.

13. We have not been persuaded to buy the argument that circumstances have arisen to enable the petitioner to exercise his option again.

14. The petition being without any substance merits rejection and it is so ordered accordingly. The parties would, however, bear their own costs of the cause.

(S. D. ANAND)
JUDGE

(J. S. KHEHAR)
JUDGE

September 22, 2006
SRM